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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re PHOEBE G., a Person Coming Under
the Juvenile Court Law.

B270154
(Los Angeles County
Super. Ct. No. CK97965)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Appellant,

v.

ESMERALDA G.,

Defendant;

PHOEBE G.,

Respondent.

APPEAL from an order of the Superior Court of Los Angeles County. Akemi D. Arakaki, Judge. Affirmed.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel and Tyson B. Nelson, Deputy County Counsel, for Plaintiff and Appellant.

No appearance for Defendant.

Marissa Coffey, under appointment by the Court of Appeal, for Respondent.

The Los Angeles County Department of Children and Family Services (Department) brings this appeal, challenging the juvenile court's order placing minor Phoebe G. (Phoebe) (now age 3) with her maternal grandparents. Phoebe, through her attorney, is the respondent. The Department argues the juvenile court had no statutory authority to make such a placement because the maternal grandparents' home was not approved under the Adoptions and Safe Families Act of 1997 (42 U.S.C. § 670 et seq.) (ASFA). Alternatively, the Department argues the juvenile court abused its discretion in placing Phoebe with her grandparents. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Background

Phoebe was detained at birth in February 2013, as a result of her mother, Esmeralda G. (mother), suffering from paranoid schizophrenia.¹ The maternal grandmother, H. G. (MGM), immediately came forward and asked that Phoebe be placed with her and the maternal grandfather, T. G. (MGF) (collectively the grandparents). MGM appeared at the detention hearing and the juvenile court granted the Department discretion to place Phoebe with any appropriate relative and to prepare a prerelease investigative report (PRI). Meanwhile, Phoebe was detained in foster care.

On February 26, 2013, the Department conducted a home assessment of the grandparents to prepare the PRI. MGM reported that she was 46 years old and had been married to MGF for more than 26 years. They have five children together. Mother is the oldest child, followed by four children who then ranged in age from eight years old to 21 years old. Mother's symptoms came on suddenly and MGM tried to get mother to take her medication and seek prenatal care. Mother was living close by and MGM was very close to mother. The four younger children were living with the grandparents in a one-bedroom, one-bathroom home that had a clean living room.

MGM disclosed that the family had prior involvement with the Department as a result of domestic violence. The family received voluntary family maintenance services

¹ Phoebe's father's whereabouts are unknown.

(VFM) from May 2010 through November 2011. During this time, MGM received family maintenance services and MGF received reunification services. It appears that after the VFM closed in November 2011, there was an open court case that was closed in September 2012. Additional referrals were received in 2012, but closed as unfounded. The description of the initial Department involvement beginning in 2010 and additional referrals is sparse and somewhat confusing.

Concerns expressed by the Department regarding the grandparents' home included the following: there was no crib; there was a hole in the ceiling and peeling paint; there were clothes on the bedroom and bathroom floors; the grandparents slept on the floor while the children slept in beds; there were no safety releases on metal bars in the bedroom windows; there were only two smoke detectors; and "Grandparents have substantiated referral for domestic violence with an open case and this home would not meet ASFA approval." The PRI noted that no criminal history of any adults in the family was found by the Department of Justice (DOJ), the FBI, or the Child Abuse Central Index (CACI). The Department recommended the grandparents' home be found "negative." The juvenile court found the PRI to be negative and granted the Department discretion to place Phoebe with any appropriate relative.

At the jurisdiction hearing in April 2013, at which MGM appeared, the juvenile court ordered the Department to conduct another assessment of the grandparents' home, to submit a supplemental report regarding placement, and to place Phoebe with the grandparents if mother was not residing with them and the adults had a clear criminal history.

On May 2, 2013, the Department's dependency investigator (DI) made an unannounced visit at the grandparents' home. MGM reported that she and MGF had forbidden mother to enter the home in an effort to ensure that Phoebe would be safe. MGF reported that he was concerned mother might try to leave with Phoebe if she was having an "episode." The DI observed that the grandparents had bought a crib, appropriate bedding, and a car seat. The DI told the grandparents that the crib could not be in the dining room and that Phoebe needed her own room. The DI also interviewed

one of mother's nurses, who expressed concern that the grandparents did not have control over mother.

At the disposition hearing on May 7, 2013, at which MGM appeared, the juvenile court again ordered the Department to assess MGM for placement, to assess her as a monitor for mother's visits, to assist the grandparents "in getting waivers so ASFA can be approved," and to submit a progress report addressing placement. The court also permitted MGM to have unmonitored visits with Phoebe at least once a week for three hours in a neutral setting without mother present.

For the progress hearing on July 2, 2013, the Department reported that during a visit at a Department office in May 2013, mother physically assaulted MGM in front of Phoebe and the caretaker by hitting MGM on the head with her fists. Security was called and MGM declined to press charges. During another inspection of the grandparents' home on June 12, 2013, the social worker observed the home to be clean and organized, the hole in the ceiling of the living room had been repaired, the metal bars had emergency safety releases, there were smoke detectors in every room, and curtains had been installed as room dividers. The crib had been placed in a hallway blocking the main entrance, but the grandparents explained that they used the backdoor as the entrance and exit point. The bedroom windows did not open, which presented a safety concern. The grandparents also changed the locks on the door so that mother could not enter. Mother had stopped coming by after she began living in a boarding facility.

For the six-month review hearing on November 5, 2013, the Department reported that Phoebe had been moved to a different foster home to facilitate visits with mother, and Phoebe was doing well in her placement. The social worker observed Phoebe to be bonded with MGM during visits and to "light up" at the sight of MGM, who brought toys and blankets. The grandparents joined mother in family therapy sessions. The juvenile court ordered the Department to continue to assess MGM for placement and to assist with any available funding.

For the 12-month review hearing on May 6, 2014, the Department reported that MGM continued to have weekly unmonitored visits with Phoebe, who smiled and

extended her arms when spotting MGM. Phoebe was “thriving” in her placement. MGM appeared at the 12-month review hearing. The court ordered the Department to “re-refer” MGM to ASFA for placement.

For the 18-month review hearing on August 20, 2014, the Department reported that it had submitted an ASFA referral on July 17, 2014, but had not heard back. MGM continued to have weekly unmonitored visits with Phoebe, who continued to be bonded with MGM. Phoebe continued to do well in her placement, and the foster parents indicated they were willing to provide her with a stable and permanent home. MGM was present at the hearing. The Department was ordered to submit a supplemental report addressing, among other things, ASFA regarding MGM.

ASFA Denial and Appeal

An ASFA denial letter was sent to MGM, stating that her home was not approved due to “applicant qualifications” and “criminal record clearance requirement.”² The letter stated that “[a] review of the records indicates that you have recent substantiated child abuse history which includes a failed voluntary maintenance contract, an open case with dependency court and that you did not fully comply with court ordered programs.” The letter also informed MGM that if she disagreed with the denial, she was entitled to request a state hearing.

² The letter stated: “**Section 89318 Applicant Qualifications** states that an applicant shall have the knowledge, ability, and willingness to comply with the applicable laws and regulations, provide care and supervision appropriate to a child, and apply the reasonable and prudent parent standards characterized by careful and sensible parental decisions that maintain the child’s health, safety and best interest and promote a normal, healthy, balanced and supported childhood experience. Further, the department may deny an application issued under this chapter upon any of the following grounds of Section 1524 for conduct which is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or the people of the State of California.”

“**Section 89319 Criminal Record Clearance Requirement** that states that all persons subject to criminal record review shall obtain a criminal record clearance from the California Department of Social Services or county as appropriate. . . .”

On October 15, 2014, mother's therapist wrote a letter recommending that the grandparents' home be reconsidered as a placement for Phoebe based on their ability to set limits with mother and the benefits Phoebe would derive from being raised by family.

On December 8, 2014, the Department reported that the grandparents had livescanned and continued to have clear DOJ and FBI results, and that CACI was pending.

At a hearing on December 15, 2014, at which MGM was present, the juvenile court once again ordered the Department to submit another report addressing relative placement.

On February 20, 2015, the Department reported that MGM appealed the ASFA denial of her home and the hearing was held on December 11, 2014. The California Department of Social Services (CDSS) denied the claim. The Department did not state a reason for the denial in its report.

Contested Placement Hearing

After several continuances, the contested placement hearing was conducted over three days beginning October 29, 2015. Phoebe's attorney and mother's attorney called several witnesses to testify:

Isela Castro was a social worker investigator for the Children's Law Center. She observed Phoebe at the grandparents' home on October 20, 2015. Phoebe was shy and spoke only after looking to MGM for approval. Phoebe laughed, smiled and seemed comfortable, staying close to MGM the whole time. The home was clean, spacious, had high ceilings, and did not appear crowded. Phoebe's crib was in the bedroom with MGM's youngest daughter's twin bed.

Guadalupe Ortiz was the Department's ASFA social worker, who wrote the denial letter. She received the assignment to assess MGM's home for placement in July 2014. She denied the placement for the sole reason that the grandparents had a child welfare history, which consisted of a failed VFM leading to an open case. She did not know how the case was resolved or whether there was compliance with the case plan and

did not evaluate the current family dynamics. She requested the case file on the closed case, but never received it.

Robert James Logan was a social worker investigator for the law firm of mother's attorney. On March 25, 2015, he went to the grandparents' home and took photographs, which were admitted into evidence. The refrigerator was well stocked with healthy food and the home was clean and well kept. Other items included books, homework items, and items pertaining to athletic events for two of the older girls.

Evelyn Cerda was the Department social worker who had been assigned to this case for the past three years. After the PRI was found negative, she did not take any further steps to assess MGM, other than to make the ASFA referral and do a walk-through of the home. She could not recall if the juvenile court ordered the Department to continue to assess MGM for placement. She was concerned about the grandparents' ability to protect Phoebe from mother following the May 2013 visit at which mother attacked MGM. She was not aware of any further similar incidents. She was also unaware of the grandparents' current family dynamics, since "ASFA has the big weight of the Department's decision and ASFA was denied." She did not assess MGM for placement after approval was denied under ASFA. She never observed a visit between MGM and Phoebe.

MGM testified that she lived with MGF, her 16-year-old daughter and her 11-year-old son. Her two older daughters, who were 18 and 24 years old, were living with friends and attending school. MGM did not work outside the home; MGF worked regularly. After the domestic violence incident in 2010, MGM attended therapy, and parenting and domestic violence classes, which she completed. Her children were never detained from her. During the open case, she and the children lived in a hotel while MGF remained in the home. When the case was over, the social worker told her they were "freed." She testified that the domestic violence classes taught her how to have better conversations with MGF, that she is now in charge and has the last word, and that she and MGF "get along very well now." She has been visiting with Phoebe twice a week for the whole day. MGM has a good relationship with mother and checks to see if mother is

taking her medication, and takes mother to the doctor when mother is unwell. Mother has not been aggressive with her since the May 2013 incident. Phoebe gets along well with MGM's two children living at home and runs to MGM's son when she sees him. MGM wanted Phoebe to live with family, even if they did not receive funding. MGM was willing to follow all of the court's orders and to restrict mother's contact.

Among the documents admitted into evidence were letters in 2010 and 2011 from the counselor in the grandparents' open case, which stated that the family was in compliance with their counseling, that MGF had demonstrated a willingness to make the necessary changes in his life to be a better parent and husband, had shown significant improvement in communicating with his family, and that "[i]t was a pleasure having a willing and consistent Family." MGM also submitted certifications of completion for domestic violence and individual counseling for herself and MGF, a certificate of completion for parenting classes for MGF, and academic awards for her son and youngest daughter.

Following the testimony and argument of counsel, the juvenile court ordered that Phoebe be placed with the grandparents, with the foster parents allowed to visit if they desired. The court stated that it was exercising its responsibility to independently review the case and noted the following: "I heard the testimony of the workers, and I think that was most telling when they said, well, no. The checkboxes were all there. Failed VFM like everyone said. Failed case, CACI hit. They never pulled the file. They never even looked at the underlying allegations of how the proceedings went, the issues and how they were addressed. They did not interview one single person in the household regarding any ongoing issues or even address whether or not they could try to assist the family in somehow addressing the issue. [¶] . . . [¶] These people completed all their programs . . . that has been the complete transformation of this family. [¶] I didn't meet the grandmother in 2010. I met her today and throughout the pendency of these proceedings. The most telling part during her testimony was when what's different now. Well, I make the decisions. And her body language and the forcefulness of [when] she made that response was so telling. And I have the luxury of seeing these parties. And if

you look at the dynamic between the grandmother and grandfather, it is very telling that the grandmother, I think, has been so empowered by this process and really stepped up to [be] the matriarch of this family, raised two successful young adults, and has two fabulous kids in her home still who are excelling in every respect from the evidence that has been presented.” The court terminated mother’s reunification services and set the matter for a permanent placement hearing.

This appeal by the Department followed.

DISCUSSION

I. Statutory and Case Analysis

Welfare and Institutions Code Section 361.3, subdivision (a)³ provides that when a child is removed from the physical custody of his or her parents, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. The statute directs that in determining whether placement with a relative is appropriate, “the county social worker *and court* shall consider” several nonexclusive enumerated factors.⁴ (*Italics added.*) Section 361.3, subdivision (a)(8)

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

⁴ These factors are: “(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs. [¶] (2) The wishes of the parent, the relative, and child, if appropriate. [¶] (3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement. [¶] (4) Placement of siblings and half siblings in the same home, unless that placement is found to be contrary to the safety and well-being of the siblings, as provided in Section 16002. [¶] (5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect. [¶] (6) The nature and duration of the relationship between the child and the relative, and the relative’s desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful. [¶] (7) The ability of the relative to do the following: [¶] (A) Provide a safe, secure, and stable environment for the child. [¶] (B) Exercise proper and effective care and control of the child. [¶] (C) Provide a home and the necessities of life for the child. [¶] (D) Protect the child from his or her parents. [¶] (E) Facilitate court-ordered reunification efforts with the parents. [¶] (F) Facilitate visitation with the

provides that “For a relative to be considered appropriate to receive placement of a child under this section, the relative’s home shall first be approved pursuant to the process and standards described in subdivision (d) of Section 309.”

Section 309, subdivision (d)(1) provides that if an able and willing relative requests placement of a child, “the county welfare department shall initiate an assessment of the relative’s or nonrelative extended family member’s suitability, which shall include an in-home inspection to assess the safety of the home and the ability of the relative or nonrelative extended family member to care for the child’s needs, and a consideration of the results of a criminal records check conducted pursuant to subdivision (a) of Section 16504.5 and a check of allegations of prior child abuse or neglect concerning the relative or nonrelative extended family member and other adults in the home. . . . Upon completion of this assessment, the child may be placed in the assessed home. For purposes of this paragraph, and except for the criminal records check conducted pursuant to subdivision (a) of Section 16504.5, the standards used to determine suitability shall be the same standards set forth in the regulations for the licensing of foster family homes.”

Section 361.2, subdivision (e) provides that when the court orders removal of a child from his her parent, “the court shall order the care, custody, control, and conduct of the child to be under the supervision of the social worker who may place the child in any of the following: [¶] . . . [¶] (2) The approved home of a relative.”

The Department argues that because the statutes require the relative’s home to be approved, the juvenile court lacked authority to place Phoebe with MGM once her home was denied approval under ASFA and this decision was then affirmed by the CDSS. We disagree.

Cesar V. v. Superior Court (2001) 91 Cal.App.4th 1023 (*Cesar*) is instructive. There, the reviewing court held that a prior child protective history does not bar a relative

child’s other relatives. [¶] (G) Facilitate implementation of all elements of the case plan. [¶] (H) Provide legal permanence for the child if reunification fails. [¶] . . . [¶] (I) Arrange for appropriate and safe child care, as necessary. [¶] (8) The safety of the relative’s home” (§ 361.3, subd. (a).)

from being evaluated and considered for placement of a dependent child under section 361.3. The juvenile court ordered the social services agency to evaluate the paternal grandmother for possible placement. (*Cesar, supra*, at p. 1027.) When the social worker learned of a prior allegation of abuse involving the grandmother and her son, the worker abandoned the assessment of the grandmother's home and began looking for another foster family. "The record shows the social worker did not make significant efforts to gather the required information before deciding [the grandmother] was unsuitable and abandoning the assessment. Furthermore, the social worker began looking for another foster family before [the grandmother] had even received [the agency's] forms." (*Id.* at p. 1033.) Noting that the agency was required to give a "fair chance" to a relative seeking placement and that the agency's approach had not been "within the spirit of the statute," the appellate court ordered the juvenile court to reverse its order denying placement with the grandmother and to order the agency to complete its assessment of the grandmother as required by section 361.3. (*Cesar*, at p. 1033.) "When section 361.3 applies to a relative placement request, the juvenile court must exercise its independent judgment rather than merely review [the agency's] placement decision for an abuse of discretion. The statute itself directs both the 'county social worker and court' to consider the propriety of relative placement. (§ 361.3, subd. (a).)" (*Id.* at p. 1033.)

Other cases have followed *Cesar*. In *In re Antonio G.* (2007) 159 Cal.App.4th 369, the maternal grandmother (Sheena) argued that her rights were violated under section 361.3 when two of her dependent grandchildren were not placed with her. The reviewing court agreed, noting: "In essence, Agency's attitude toward Sheena was that she was disqualified from consideration as a placement option because the children had been removed from her home. This was not only legally incorrect, it also deprived Sheena of a 'fair chance' to be the children's caretaker. [Citation.] Further, it was not necessarily in the children's best interest. The linchpin of placement of dependent children is their best interests." (*In re Antonio G., supra*, at p. 378.)

In *In re N.V.* (2010) 189 Cal.App.4th 25, the social services agency declined to approve the home of the maternal grandmother (Christy) for placement because there

were four child welfare referrals involving her family, including a substantiated report that the dependent children's mother was molested by the maternal grandfather while the mother was living with Christy and a substantiated report that Christy's 13-year-old son forced her five-year-old son to orally copulate him. (*Id.* at p. 28.) Relying on *Cesar*, the reviewing court stated: "When the Agency deems a relative's home unsuitable due to a previous child welfare referral, 'the juvenile court must exercise its independent judgment rather than merely review [the Agency]'s placement decision for an abuse of discretion." (*In re N.V.*, *supra*, at p. 30.) The reviewing court therefore held the juvenile court abused its discretion by excluding evidence concerning the agency's reasons for refusing to approve Christy's home. (*Id.* at p. 31.)

In *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, the reviewing court held that a "juvenile court has jurisdiction to review the agency's denial of a criminal records exemption for abuse of discretion." (*Id.* at p. 1050.) There, the agency had refused to place the dependent minor in the home of her maternal great-uncle and his wife because he had a criminal record and there were prior child welfare cases. In reaching its holding, the court noted that a child has a legally cognizable interest in his or her placement with a relative and that natural children have a fundamental independent interest in belonging to a family unit. (*Id.* at p. 1053; See also *In re Isabella G.* (2016) 246 Cal.App.4th 708, 719 ["When considering whether to place the child with a relative, the juvenile court must apply the placement factors, and any other relevant factors, and exercise its independent judgment concerning the relative's request for placement"].)

Here, the juvenile court was correct in exercising its independent judgment in determining whether Phoebe should be placed with MGM. As the juvenile court noted: "I understand ASFA. I understand the law. But I don't believe it would be appropriate for the court to just in this circumstance . . . accept the ASFA denial and be the next rubber stamp in that next line of rubber stamps that this case had gone through. That really looks to me what really happened."

The social worker who made the decision to deny approval of MGM's home under ASFA testified that the sole reason for the denial was the prior child welfare referral

regarding domestic violence between the grandparents that resulted in an open case. But no one from the Department ever followed up on this prior case to review its particulars, see how it was resolved, and what the grandparents had learned, and no one interviewed the family about their current situation. The social worker incorrectly stated in her denial letter that there was a criminal record history, but neither MGM, MGF nor any of their adult children have criminal records. She also incorrectly stated that the grandparents had not completed their prior case plan, when in fact they completed all of their requirements and were praised by their counselor. There is no explanation in the record for why MGM's appeal of the denial was affirmed by the CDSS. Moreover, throughout the pendency of the instant case, the juvenile court repeatedly ordered the Department to reassess MGM for placement and to assist her in this regard, but this was not done after the home was not approved. If ever there was a case calling for the juvenile court's exercise of its independent judgment, this was it.

II. No Abuse of Discretion

The juvenile court did not abuse its discretion in ordering that Phoebe be placed with MGM.

When Phoebe was detained at birth, MGM immediately came forward and sought to have Phoebe placed with her. MGM attended nearly every hearing in this case. She visited with Phoebe throughout the case, having unmonitored visits that went well. Phoebe was bonded with MGM and the children who lived with MGM. While there was some concern at the beginning of the case whether the grandparents could control mother and protect Phoebe from her, by the time of the contested placement hearing it was clear that MGM was firmly in control of the family and mother was living in a boarding care facility. When issues were pointed out with the home, such as the lack of a crib and sufficient smoke detectors, a hole in the ceiling, and metal window bars that did not open, the grandparents immediately had the issues resolved without assistance from the Department. Their home was clean and well kept and contained books and other items showing that their children's education and activities were important to them. By the time of the hearing, only two of their children were living at home, making it much less

crowded. The grandparents never gave up on mother with her substantial mental health issues; they attended family therapy sessions with her, encouraged her to take her medication, and took her to the doctor when she was unwell. They never gave up on Phoebe either.

DISPOSITION

The juvenile court's order placing Phoebe with the grandparents is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT